

PUBLIC LAW BOARD NO. 1838

Award No. 32

Carrier File MW-CH-78-3

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company

Statement

of Claim: 1. Carrier violated the effective Working Agreement - Rule 15, when it failed to recall furloughed employee Albert Needles to service when extra help was needed to clean snow from switches on Section No. 3, at Joyce Avenue, Ohio on January 18 and 19, 1978, and used welders to perform the normal section work.

2. Claimant Albert Needles be paid 16 hours straight time, 8 hours overtime, and 7-1/2 hours double time for time worked by welders on January 18 and 19, 1978, and 3 hours straight time for time worked as section laborers on February 8, 1978, by Division Engineer Painter and Roadmaster Short.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 1, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

This is a pilot claim. It was initially instituted, January 17, 1978, by the General Chairman as follows:

"We have been informed by the above named claimant that on January 18 and 19, 1978, welders were used to clean switches at Section #3, Joyce Avenue, Ohio. During these two days, these men made 8 hours overtime and 7 1/2 hours double time, while claimant was furloughed.

Then, on February 8, 1978, Mr. Painter, Division Engineer, and Mr. Wilson Short, Roadmaster, cleaned switches for three hours.

We are requesting that Mr. Needles be paid for all the time listed above and that he be paid each day as long as this practice exists.

We are citing Rules 15, 43 and 44, as well as any other rule of the current M/W Agreement which might pertain thereto in support of this request."

Carrier's highest officer designated to handle such claims, ultimately, replied:

"Initially, we find your presentation of this matter to be vague and lacking sufficient information to enable the Carrier to determine either the nature of the violation of which you complain or the specific agreement provision upon which you wish to rely in establishing Claimant's entitlement to the unearned compensation requested.

Without retreating from the above, we can find nothing in the rules of the current working agreement, nor have you cited such, which could remotely be interpreted as entitling Claimant to the work of cleaning switches to the exclusion of all other classes or crafts of employees. To the contrary, we find that numerous classes of employees such as welders, carpenters, etc., have always been used to clean switches free of snow during emergency conditions. This is necessary to prevent stoppage to Carrier's operations. Objection to this practice has never been raised by your organization.

Under the circumstances, we find there has been no violation of Rules 15, 43 and 44 nor any other rule of the current working agreement and this claim is, therefore, declined."

We find that there were sufficient facts presented to reach the merits of this dispute. Welders were used to clean switches of snow January 18 and 19, 1978. However, the Division Engineer and Roadmaster cleaned switches for 3 hours on February 18, 1978.

We further find that cleaning switches, as performed, February 8, 1978, by both the Division Engineer and the Roadmaster is work that otherwise should have been performed by M/W employees rather than by supervisors outside the scope of the M/W Agreement. The claim, or claims in more than the one occurrence cited, filed in protest thereof is sustained.

The Employees did not deny Carrier assertions that there was no rule cited which was supportive of the concept of "work exclusivity" as here contended for Claimants, or, that "numerous classes or crafts of employees such as welders, carpenters, etc., have always been used to clean switches free of snow in emergency conditions." In this latter connection, it was pointed out in Third Division Award 13626 (Miller):

"This Board has long recognized that a Carrier may assign such employees as good judgment in the situation dictates during an emergency. See Award 11241 (Moore); Award 11371 (Dorsey) and Award 13340 (Miller)."

This Board agrees therewith. Therefore, claims of this nature are denied.

Award: Claims disposed of as per findings.

Order: Carrier is directed to make this Award within thirty (30) days of date of issuance shown below.



A. D. Arnett, Employee Member



G. C. Edwards, Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member